IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 948 OF 2006.
IN
SECOND APPEAL NO. 949 OF 2006.

Pandurang Bhagwanpuri Gosavi. ... Appellant
(In both the appeals.)

Versus.

Smt.Narmadabai Tukaram Saste
and others. ... Respondents.
(in both the appeals.)

Shri S.S.Kshirsagar for the Appellant in both the appeals.

Shri Milind Deshmukh for the Respondents Nos.1, 2-A to 2-C, and 2-E to 2-H.

CORAM : ABHAY S.OKA, J.

DATED : 20th July, 2007.

P.C.:

1. Heard the learned Counsel appearing for the parties. Both the Second Appeals are preferred by the same original Plaintiff. Though the documents subject matter of the two different suits filed by the Plaintiff are different, considering the fact that the controversy involved in the matters is more or less the same, the Appeals are taken up for admission together. The documents which are subject matter of these Appeals are described as sale deeds. The question to be decided is whether the said documents are in the nature of a mortgage by conditional sale or whether the said documents effect the transaction of absolute sale with an option to repurchase the property.

2. The contention of the Appellant/Plaintiff is that the documents are of a mortgage by conditional sale and the period of five years mentioned in the documents was nominal in nature. Apart from the two suits which are subject matter of these Appeals, there was a suit based on a similar document. The three suits were heard together by the learned trial Judge. The learned trial Judge held that the Plaintiff has averred that he had mortgaged the suit land in favour of the Defendants under a mortgage by conditional sale and the period mentioned in the documents was only nominal. However, the trial Court dismissed the suits filed by the Appellant. The Appellate Court held that the Appellant has not established that the disputed transactions are in the nature of a mortgage by conditional sale.

3. The submission of the learned Counsel appearing for the Appellant is that on a plain reading of the documents which are subject matter of dispute, it is obvious that there was a relationship of debtor and creditor between the parties and all ingredients of a mortgage by conditional sale as contemplated by section 58(c) of the Transfer of Property Act 1882 have been satisfied. He submitted that the Appellate Court has completely misread the documents. He, therefore, submitted that a clear question of law arises.

4. I have considered the submissions. On a plain reading of both the documents it is obvious that it cannot be said that a relationship of debtor and creditor is created by the documents. Merely because the object and purpose of paying the consideration is mentioned in the documents, it cannot be said that the relationship between the parties was that of a debtor and creditor. It is thus difficult to find fault with the view taken by the Appellate Court that the documents in question are not in nature of a mortgage. No substantial questions of law arises in the Second Appeals and the same are accordingly dismissed.

Judge.